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In The
Supreme Court of the United States
October Term, 1995

LARRY D. STORER AND
MARGARET K. STORER,
Petitioners,

v.

BRUCE COMLY FRENCH, TRUSTEE
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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October 11, 1995

62 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can Congress permit the states to determine the amount of contract impairment under 11 U.S.C. §522(b)(1) (the State "opt-out" provision for property exemptions) without violating the requirement of "uniformity" under Bankruptcy Clause and the Contract Clause of the U.S. Constitution?

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT

The petitioners in this case are Larry D. and Margaret K. Storer. They were debtors in the bankruptcy court, appellants in both the district court and court of appeals.

The respondent, Bruce Comly French, was the Chapter 7 trustee in the bankruptcy court, and appellee in both the district court and the court of appeals.

28 U.S.C. §2403(b) applies. The State of Ohio, represented by Betty Montgomery, and the United States of America, represented by the Solicitor General, may also be respondents.

No party is a corporation.

TABLE OF CONTENTS

Page No.

QUESTIONS PRESENTED FOR REVIEW I

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT II

TABLE OF CONTENTS III

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE ... 2

STATEMENT 2

REASONS CERTIORARI SHOULD BE GRANTED . 6

CONCLUSION 17

APPENDICES ..... 1a - 36a

TABLE OF AUTHORITIES

Cases *Page No.*

Cooley v. Bd. of Warrens, 53 U.S. 299 (1851) 10

General Motors Corporation v. Romein, 503 U.S. 181, 186 (1992) 14

Gustafson v. Alloyd, _ U.S. _, 115 S.Ct. 1061 (1995) 10

Hanover Nat'l Bank v. Moyses, 186 U.S. 181 (1902) 6-8, 13-17

In re Beckerford, 3 Fed.Cas. 26 (No. 1,209 C.C.D. Mo. 1870) 13

In re Davis, 16 B.R. 62 (Bankr. D. Md. 1981) 7

In re Deckert, 7 Fed.Cas. 343 (No. 3,728 C.C.E.D. Va 1874) 13

In re Freelander, 93 B.R. 446 (Bankr. E.D. Va. 1988) 13

In re Locarno, 23 B.R. 622 (Bankr. D. Md.) 7

In re Sullivan, 680 F.2d 1131, 1134 (7th Cir. 1982) 13, 17

Jones & Laughlin Steel, 301 U.S. 1 (1937) 14

Maryland v. Wirtz, 392 U.S. 183 (1968) 14

Railway Labor Executives' Association v. Gibbons, 455 U.S. 457 (1982) 13

Rhodes v. Stewart, 705 F. 2d 159 (6th Cir.), *cert. denied*, 464 U.S. 983 (1983) 6, 7

Storer v. French, 58 F.3d. 1125 (6th Cir. 1995) 6

Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819) 8

U. S. Term Limits, Inc. v. Thorton, ___ U.S. ___, 115 S.Ct. 1842 (1995) 17

U.S. v. Watson, 423 U.S. 411 (1975) 10

United States v. Lopez, __ U.S. __, 115 S.Ct. 1624, 1628-29 (1995) 14, 17

Statutes and Rules

U.S. CONST. Amend. XIV 16

U.S. CONST. art. I, § 10, cl. 1 ..... 7, 8, 15

U.S. CONST. art. I, § 8, cl. 4 ..... 8-11, 13, 17

11 U.S.C. § 109 10

11 U.S.C. §522(b)(1) (1995) 3, 15-17

11 U.S.C. §522(d) (1995) 3, 6

2 Stat. 19, §§ 5, 18, 34, 35 11

2 Stat. 248 (1803) 11

Bankruptcy Act of 1800, 2 Stat. 19 (1800) 11

Bankruptcy Act of 1841, 5 Stat. 440 (1841) 11

Bankruptcy Act of 1898, 30 Stat. 544, chap. 541 (1898) 5, 13, 15

Bankruptcy Act of 1978, 11 U.S.C. §§ 101-151326 (1995) 3-8, 13, 14, 16

IOWA CODE ANN. § 561.16 (West 1995) 4

KAN. ST. ANN. § 60-2301 (1995) 4

MICH. COMP. LAWS § 27A.6023(1)(h) (1995) 5

N.D. CENT. CODE. § 47-18-01 (1995) 4

OHIO REV. CODE ANN. § 2329.662 (Baldwin 1995) 3

OHIO REV. CODE ANN. §2329.66(A)(1)(b) (Baldwin 1995) .. 3

OHIO REV. CODE ANN. §2329.66(A)(18) (Baldwin 1995) . 5, 16

OHIO REV. CODE ANN. §2329.66(A)(4) (Baldwin 1995) 5, 6, 16

OR. REV. STAT. § 23.240 (1995) 4

Pub. L. 103-394, Sec. 108(d)(6) 3

TEX. CONST. art. 16, § 50 3

TEX. PROP. CODE § 41.002 (West 1995) 3

Miscellaneous

1 COLLIER ON BANKRUPTCY ¶ 0.03 (14th ed. 1974) 11

4 ELLIOT'S DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 490 (J. Elliot 1845) 11

Comment, *Bankruptcy Exemptions: Whether Illinois's [sic] Use of the Federal 'Opt-Out' Provision is Constitutional*, 1981 S. ILL. U. L. J. 65, 73-82 (1982) 12

Comment, *The New Bankruptcy Code: A Comparison of Texas and Federal Exemptions*,
17 HOUS. L. REV. 373, 381-82 (1981) 12

J. Story, 2 COMMENTARIES ON THE CONSTITUTION 45 (4th ed. 1873) (1st ed. Boston 1833) 11

Jeff Testerman, *How much is a $6 Million Mansion in Avila Worth?*, ST. PETERSBURG TIMES, Dec. 6, 1993, at 1A 12

Judith Schenck Koffler, *The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity*, 58 N.Y.U.L. REV. 22, 41 (1983) 10, 17

Nadelman, *On the Origin of the Bankruptcy Clause*, 1 AM. J. LEGAL HIST. 215, 221 (1957); Koffler, 58 N.Y.U.L. REV. 22, 54 (1983) 12

Note: *Federal Exemptions and the opt-Out Provisions of Section 522: A Constitutional Challenge*, 58 IND. L. J. 143 (1982). . 17

Senate Doc. No. 65, 72nd Cong., 1st Sess. ((1932) 51, n.6) . 11

THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FEDERAL JUDICIAL WORKLOAD STATISTICS, 6 (March 31, 1993) 17

THE FEDERALIST No. 42, at 308 (J. Madison) (B. Wright ed. 1961) 9

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Petition for a Writ of Certiorari

OPINIONS BELOW

The court of appeals opinion (Pet. App. 1a-9a) is reported at 58 F. 3d 1125 (6th Cir. 1995).

The opinion by the district court is not reported but is found at Pet. App. 10a-11a.

The opinion by the bankruptcy court is not reported but is found at Pet. App. 12a-15a.

JURISDICTION

On July 13, 1995 the court of appeals issued a final decision. App. *infra,* 1a. Petitioners filed this petition for certiorari on October 11, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

Section 522 of Title 11, United States Code, Sections 2329.66 and 2329.662, Ohio Revised Code, Article I, Section 8, Clause 4, Article I, Section 10, Clause 1, and Amendments V and XIV of the U.S. Constitution are reproduced, in relevant part, at App., *infra,* 16a-32a.

STATEMENT

1. Congress has the authority to enact "[u]niform laws on the subject of Bankruptcies ..." U.S. CONST., art. I, § 8, cl. 4. States have some coextensive authority in bankruptcy law, but states cannot relieve a debtor of his or her obligations without impairing contract in violation of the Contract Clause. U.S. CONST. art. I, § 10, cl. 1.

Exempt property is property that the law permits a debtor to retain and protect from the trustee and creditors. Its policy rationale is to provide the debtor with a "fresh start". To the extent the value of a debtor's property exceeds the limits of the exemptions, the amount of debt discharged in bankruptcy is effectively reduced. The reason is the debtor must pay the debt, at least in part, by making the non-exempt property or its equivalent available for payment on that debt. The difference between debts and non-exempt property constitutes the amount of debt discharged.

a. The Bankruptcy Act of 1978, 11 U.S.C. §§ 101-151326 (1995), introduced a new exemption scheme resulting in a hodgepodge of federal and state bankruptcy exemption laws across the country. The federal exemptions, found at 11 U.S.C. §522(d) (1995), permitted, as relevant in this case, a debtor to exempt up to $7,500.00 in a homestead. Joint debtors could exempt $15,000.00[1]

States also have exemption statutes which restrict the amount of a debtor's assets can be reached by a creditor in state court. Section 522 also allows states to "opt-out" of the federal exemption schedule and utilize their own schedules. 11 U.S.C. §522(b)(1) (1995). Ohio directed that its residents must only utilize the Ohio exemptions. OHIO REV. CODE ANN. §2329.662 (Baldwin 1995). Ohio residents may only exempt $5,000.00 in a homestead. OHIO REV. CODE ANN. §2329.66(A)(1)(b) (Baldwin 1995).

b. The states' responses to Section 522(b)(1) have varied. In total 39 states allow law debtors the use of federal exemptions or the equivalent. Ohio does not. Section 522 (b)(1) coupled with the various state laws permits debtors, and their creditors, to potentially face five different outcomes dependent upon the debtor's residence at the time of filing: **a)** twenty three (23) states only allow use of their own *more generous* state exemptions; **b)** eleven (11) states permit only use of their own exemptions which are more restrictive than the federal exemptions; **c)** two (2) states permit use of only their own exemptions, which are equivalent to the federal exemptions; **d)** eleven (11) states allow debtors to choose between their state and the federal exemptions; and **e)** three (3) states and the District of Columbia only make use of the federal exemptions.

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[1]In 1995, this was amended to allow for exemptions of $15,000 and $30,000 respectively. Pub. L. 103-394, Sec. 108(d)(6).

Of those forbidding the use of federal exemptions, rather than reducing the exemption like Ohio, many states have made their homestead exemption unlimited in value. For example, a Texas debtor can exempt one or two lots in a city, town or village not exceeding one acre of land plus the improvements thereon, with no dollar limit. TEX. CONST. art. 16, § 50: TEX. PROP. CODE § 41.002 (West 1995) App., *infra*, 34a. Since the value is unlimited, one could exempt even a million dollar mansion.

The effect of the 1978 Act is such that creditors and debtors in the same or different states are treated dissimilarly. Dissimilar treatment of debtors and creditors occurs in *different states* where state A opts-out of the federal exemptions and state B does not. In this case, debtors in state A are bound to state A exemptions while debtors in state B have access to the federal exemptions. Dissimilar treatment of debtors and creditors in *the same state* also occurs where a state does not opt-out of the federal exemptions. Here, debtors have a choice between the state or federal exemptions. In some states, such as Ohio, debtors are confronted with a mix of bankruptcy and state insolvency exemptions.

Kansas does not permit its citizens to use the federal exemptions but allows the debtor to protect the entire homestead. KAN. ST. ANN. § 60-2301 (1995) App., *infra*, 33a. North Dakota likewise does not permit use of the federal exemptions, but protects up to $80,000 of the homestead. N.D. CENT. CODE. § 47-18-01 (1995). Oregon allows exemption of $25,000 for an individual and $33,000 for joint petitions. OR. REV. STAT. § 23.240 (1995) App., *infra*, 36a. Iowa's homestead exemption is only subject to a forty acre limit with no monetary restrictions. IOWA CODE ANN. § 561.16 (West 1995) App., *infra* 36a.

Michigan's schedule is less than Ohio ($3,500), MICH. COMP. LAWS § 27A.6023(1)(h) (1995) App., *infra*, 36a, but the debtor may choose the higher federal exemptions.

These examples illustrate that there is a significant difference in the "uniformity" of the Bankruptcy Act of 1898, 30 Stat. 544, chap. 541 (1898) and 1978 Acts. Under the 1898 Act, all debtors nationwide were able to fix the amount of property exempt under their state insolvency laws. In that case, both creditors and debtors could uniformly look only to state law to determine their remedies. Under the 1978 Act, debtors and creditors in different, and in some cases in the same states, can be bound by either federal, state, or federal-state exemption schemes.

The various exemption schemes sometimes differ not only in monetary amounts but by the interest exempted. Some states protect only realty used for a residence while others include personalty (for example, a mobile home or cooperative apartment unit) used for residence. The federal exemptions include burial plots but Ohio does not. Some states treat the homestead exemption as a separate exemption. Others, as does Ohio, include the homestead exemption in formulating caps on other exemptions. OHIO REV. CODE ANN. §2329.66(A)(4) (Baldwin 1995).

The state exemptions in bankruptcy are not always the same as in state collection actions. Some states have established exemptions only available in federal bankruptcy. For example, Ohio allows a $400 exemption for cash or other property in federal bankruptcy, but not in its own collection cases. OHIO REV. CODE ANN. §2329.66(A)(4)(a), (18) (Baldwin 1995).

2. The Debtor-Appellants, Larry D. and Margaret K. Storer, commenced a case under Chapter 7 of the 1978 Act. Their home was valued at $22,000, with a mortgage of $7,800. This left an equity of $14,200. After utilizing the Ohio exemptions, there remained $4,200 of non-exempt property. The Trustee moved to have the house appraised and auctioned in order to liquidate the non-exempt equity. In their amended schedules, the Storers each claimed an exemption of up to $7,500.00 ($15,000.00 jointly)

under Section 522(d)(1) rather than OHIO REV. CODE ANN. § 2329.66(A)(4) (Baldwin 1995).

3. The Trustee objected to Storers' use of the federal exemption. The bankruptcy court, per Judge Richard Speer, agreed with the Trustee and denied the exemption. App., *infra,* 12a - 15a. The Storers timely appealed to the district court. By consent of the parties, the matter was heard by then magistrate judge, now district judge, James Carr. Relying upon the Sixth Circuit's decision in *Rhodes v. Stewart,* 705 F. 2d 159 (6th Cir.), *cert. denied,* 464 U.S. 983 (1983), he affirmed the bankruptcy court. App., *infra,* 10a- 11a. Storers timely appealed the decision of the district court to the court of appeals. 28 U.S.C. § 1291 (1995).

4. On July 13, 1995, the Sixth Circuit affirmed the trial court. *Storer v. French,* 58 F.3d. 1125 (6th Cir. 1995), App., *infra,* 1a-9a. That court relied upon this Court's holding in *Hanover Nat'l Bank v. Moyses,* 186 U.S. 181 (1902). The court of appeals, citing its former decision in *Rhodes,* which relied on *Moyses,* held that Congress did not intend to foreclose the states from enacting more restrictive exemptions or it would not have enacted the opt-out language in Section 522(d). *Rhodes,* 58 F.3d at 1129 (App., *infra,* 6a-7a).

REASONS CERTIORARI SHOULD BE GRANTED

This Court's decision in *Moyses* needs to be reconsidered in light of the 1978 Act. In *Moyses,* this Court held that since the right to legislate bankruptcy laws was coextensive between the federal and state governments, deferral (not delegation) to state law was not unconstitutional. *Moyses,* 186 U.S. at 188. After all, the creditor had the right to the present property of the debtor through the state courts while the debtor had a personal obligation to pay the debt. States could pass laws limiting the amount of property that a creditor could forcibly obtain in its state courts, but because of the Contract Clause, they could not pass laws that abrogated the underlying obligations or afford

relief to the debtor from actions in other states' courts. *Id.* Congress, on the other hand, could legislate avoidance of contracts altogether through bankruptcy. *Id.*

Moyses, however, did not deal with the establishment of federal exemptions concurrent with state exemptions, and the simultaneous grant of authority to the states to deny its citizens the use of the federal scheme. Further, it failed to consider the effect of a state setting the amount of contract abrogation in violation of the Contract Clause.

The result of the 1978 Act is distinctly different from the uniformity facing the *Moyses* court. The current system is a heterogony of federal exemptions in some states, state exemptions in other states, and both federal and state exemptions in still other states. Additionally, some state exemptions apply to both bankruptcy and state actions, some to only bankruptcy. Thus, where, a debtor in 1902, regardless of his or her domicile state, could protect the same property in federal bankruptcy as he or she could in state insolvency proceedings, today, depending on state citizenship, some debtors can avail themselves to additional or different protection in federal bankruptcy proceedings. These inequities caused by the 1978 Act have resulted in a conflict of opinions. Compare *Rhodes*, 705 F. 2d 159, and the court of appeals decision in this case (App. *infra*, at 1a-4a), with *In re Locarno*, 23 B.R. 622 (Bankr. D. Md.), and *In re Davis*, 16 B.R. 62 (Bankr. D. Md. 1981).

The resulting scheme of national bankruptcy law can force an Ohio couple in federal bankruptcy to lose their modest home for $4200, while a debtor in Texas in federal bankruptcy can keep a million dollar mansion on 200 acres. This defies rationality and the uniformity required by U.S. CONST. art. I, § 8, cl. 4, and was not considered by this Court's decision in *Moyses.* It is this disparity in levels of exemptions, based entirely on state residency and state legislature's involvement in contract impairment, that compels a revisit to the definition of "uniform

laws" and consideration of the line demarcating the limits of exclusive power of Congress in the area of commerce and bankruptcy.

I.

Among the objectives of the United States Constitution's Framers was to provide Congress with the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States;" U.S. CONST. art. I, § 8, cl. 4. Concurrent with this grant was the limitation on the states in the same area: "[N]o State shall...pass any...Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1. The misuse by the court of appeals of this Court's decision in *Moyses* construing a completely different bankruptcy law as approval of the 1978 Act in the area of property exemptions counters the Framers' clear intent as to what the states could and could not do in the area of bankruptcy.

A.

In 1819, Chief Justice Marshall analyzed the Framers' intent in *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819). Marshall stated:

> If, in the opinion of congress, uniform laws concerning ought not to be established, it does not follow, that partial laws may not exist, or that State legislation on the subject must cease. It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the states. It is not the right to establish these uniform laws, but their actual establishment, which is inconsistent with the partial acts of the states.

Id. at 196. In other words, Marshall believed that the Bankruptcy Clause presented Congress with two options. If it exercised its

bankruptcy power, federal bankruptcy laws would be established and the states' partial laws would be suspended for the duration of the federal laws. If Congress did not exercise its power, the partial laws of the states would remain in tact. This suggests a notion of consistent (or "true") uniformity without deferral to state laws.

James Madison specifically addressed the Bankruptcy Clause in The Federalist Number 42. He wrote:

> The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States that the expediency of it seems not likely to be drawn into question.

THE FEDERALIST No. 42, at 308 (J. Madison) (B. Wright ed. 1961). The relevancy of this writing was explained by one commentator:

> Madison thus promoted the bankruptcy clause as a grant of power to safeguard the nation's interest in establishing and maintaining a single market for the extension of credit without interference from parochial or otherwise obstreperous action on the part of the states.

Judith Schenck Koffler, *The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity*, 58 N.Y.U.L. REV. 22, 41 (1983).

In light of our more mobile society (recognized by Congress in 11 U.S.C. § 109 through the expansive definition of a debtor) and the comparison of the Texas and Ohio exemption laws above, one can foresee the realistic potential for abuse of the federal bankruptcy laws. For example, prior to filing bankruptcy, a debtor could liquidate all his assets, move to Texas, buy an

expensive house, then declare bankruptcy. In this scenario, the debtor could exempt the entire homestead from the bankruptcy estate. Those Ohio residents unable to move to another state and claim exemptions uniform with other states are treated differently. This militates against any possibility of uniformity. This was one of the evils the Framers sought to cure.

In as much as the Framers used the word "uniform" twice in the same clause (once for "uniform rule of naturalization" and once for "uniform bankruptcy laws"), it follows that the Framers anticipated the same uniformity for naturalization as that for bankruptcy--no state encroachment. This Court has drawn inferences based upon "the presumption that a given term is used to mean the same thing throughout a statute," as well as the maxim *noscitur a sociis* ("a word is known by the company it keeps"). *See, e.g., Gustafson v. Alloyd*, _ U.S. _, 115 S.Ct. 1061 (1995).

Early Congressional interpretation of the Bankruptcy Clause confirm this. This Court has stated that the acts of early Congress deserve the courts' careful attention when the constitutionality of a statute is being examined. See *U.S. v. Watson*, 423 U.S. 411 (1975); *Cooley v. Bd. of Warrens*, 53 U.S. 299 (1851). The reason behind this proclamation is that the acts of early Congress provide credible evidence as to the intent of the Constitution's drafters. *Id.* An examination of the early bankruptcy laws reveals legislative intent to enact consistent national uniform bankruptcy law.

The first Congressional interpretation of the Bankruptcy Clause was nation's first bankruptcy law which was enacted in 1800, only eleven years after the Constitution's ratification. Bankruptcy Act of 1800, 2 Stat. 19 (1800). During those eleven years, there was a multitude of varying and inadequate state insolvency laws. 1 COLLIER ON BANKRUPTCY ¶ 0.03 (14th ed. 1974). The property exemptions in the Act of 1800 were

independent of state law and debtors were entitled only to those exemptions listed in the Act. 2 Stat. 19, §§ 5, 18, 34, 35.

Though the Act of 1800 was repealed in 1803, 2 Stat. 248 (1803), the role that the Act of 1800 played in demonstrating the manner in which early Congress incorporated the Framers' intentions was not affected. "'In 1824...Daniel Webster introduced and strongly supported a bill for a bankruptcy law designed to supplant the 'twenty-four different and clashing systems' of the States. President Adams recommended the passage of the law in 1825.'" COLLIER ON BANKRUPTCY at ¶ 0.04 (citing Senate Doc. No. 65, 72nd Cong., 1st Sess. ((1932) 51, n.6). Senator Hayne, speaking to the Senate on May 1, 1825, supported enacting a federal bankruptcy law which would preempt the states' insolvency laws which he characterized as "inefficient, unjust, and ruinous in their operation." 4 ELLIOT'S DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 490 (J. Elliot 1845). In 1841, the nation's second bankruptcy law was passed. Bankruptcy Act of 1841, 5 Stat. 440 (1841) (repealed 1843). This Act retained its predecessor's uniform treatment of exempt property. *Id.* at Ch.9, §§ 3,5.

Justice Joseph Story stated that the bankruptcy uniformity provision was designed to remedy the havoc created by the multiplicity of state laws. J. Story, 2 COMMENTARIES ON THE CONSTITUTION 45 (4th ed. 1873) (1st ed. Boston 1833). Story's analysis has drawn additional and recent support. *See e.g.*, Nadelman, *On the Origin of the Bankruptcy Clause*, 1 AM. J. LEGAL HIST. 215, 221 (1957); Koffler, 58 N.Y.U.L. REV. 22, 54 (1983); Comment, *Bankruptcy Exemptions: Whether Illinois's [sic] Use of the Federal 'Opt-Out' Provision is Constitutional*, 1981 S. ILL. U. L. J. 65, 73-82 (1982).

B.

One need only look at the result of the 1978 Act to see the lack of uniformity. As indicated earlier, under Ohio law, the

Storers' modest home is subject to being auctioned in order to liquidate approximately $4000 of equity. On the other hand, a Texas debtor would not face such a risk in similar or even much greater property values. One commentator explained the combined effect of the federal and Texas' exemption laws:

> [I]f a debtor's property and improvements at the date of filing of the petition are worth $200,000, but subject to a $70,000 mortgage, the homestead will be exempt to the extent of $7,500 [under the federal exemptions] compared to a possible $190,000 exemption under the Texas urban homestead exemptions. Furthermore, the same house and property located in rural Texas could be exempt in its entirety. The remaining $192,500 will be nonexempt property under the federal exemption....

Comment, *The New Bankruptcy Code: A Comparison of Texas and Federal Exemptions*, 17 HOUS. L. REV. 373, 381-82 (1981). This comparison illustrates a possible $195,000 difference between potential creditor exemptions in Ohio and Texas. A similar, example occurred recently in Florida. There, a debtor was allowed to exempt his 37,000 square foot home worth $6,000,000. See Jeff Testerman, *How much is a $6 Million Mansion in Avila Worth?*, ST. PETERSBURG TIMES, Dec. 6, 1993, at 1A.

Another example of the resulting non-uniformity under the 1978 Act can be illustrated by the result in *In re Freelander*, 93 B.R. 446 (Bankr. E.D. Va. 1988). In that case, a Virginia man was able in federal bankruptcy court to exempt a horse claimed to be valued between $50,000 and $640,000. This compares to the Storers inability under the same federal bankruptcy law to protect their equity in their home worth a small fraction of the horse.

The Court in *Moyses* did not inquire into the Constitution's Framers' intent behind the uniformity requirement. Rather, Chief Justice Fuller's opinion in *Moyses* relied on two circuit court cases that arose and were decided

under the earlier Bankruptcy Act of 1867. U.S. at 189. *In re Deckert*, 7 Fed.Cas. 343 (No. 3,728 C.C.E.D. Va 1874), and *In re Beckerford*, 3 Fed.Cas. 26 (No. 1,209 C.C.D. Mo. 1870). "The 1867 Act was, however, different in an important respect from the 1898 Act." *In re Sullivan*, 680 F.2d 1131, 1134 (7th Cir. 1982). The 1867 Act provided federal minimum exemptions in addition to property that was exempt under state law. *Id.* Therefore, "[t]he Moyses Court relied on *Deckert* and *Beckerford* without discussing the differences between the 1867 Act and the 1898 Act and without acknowledging that the uniformity challenges to the earlier Act had never been fully resolved by the Supreme Court." *Id.*

C.

The Federalist Papers make it clear that bankruptcy was an extension of the commerce power. The 1978 Act authorizes the states to intrude into an exclusive congressional prerogative over commerce: impairment of contract. Recently, this Court has defined a limit to what authority Congress has over commerce:

> But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, [301 U.S. 1 (1937),] the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." [citations omitted]
>
> Similarly, in *Maryland v. Wirtz*, 392 U.S. 183 (1968), the Court reaffirmed that "the power to regulate commerce,

> though broad indeed, has limits" that "[t]he Court has ample power" to enforce. [citations omitted]

United States v. Lopez, _ U.S. _, 115 S.Ct. 1624, 1628-29 (1995).

There is an area of commerce exclusively for states, an area exclusively for Congress, and a co-extensive area in between. The "uniform" bankruptcy laws falls in the second, not the third. The Contract Clause prohibition of the states to abrogate contract is a limitation on state authority over commerce of no less force than the limitations on commerce power of Congress as this Court explained in *Lopez*. It is merely addressing the same issue of line definition but from a different direction. If Congress cannot cross the constitutional boundaries, it cannot invite under Section 522(b) the states to cross their boundary.

II.

Section 522(b)(1) also delegates the power to impair contracts to the states. Unlike insolvency law, there is not a coextensive power to impair contracts. The Contract Clause of the U.S. Constitution states: "No State shall...pass any...Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1. This Court has explained that determination of whether a state law substantially impairs a contractual relationship consists of a three part inquiry: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *General Motors Corporation v. Romein*, 503 U.S. 181, 186 (1992).

In *Moyses*, Hanover National Bank brought suit to enforce a judgment against a bankrupt debtor. 186 U.S. at 183. The bank argued that the Bankruptcy Act of 1898 violated the Bankruptcy Clause because it failed to provide uniform laws on bankruptcies. *Id.* at 183. This Court held that federal bankruptcy laws must conform to geographical, not personal

uniformity. *Id.* at 188.[2] Therefore, it found that the Act of 1898 was, "in the constitutional sense, uniform throughout the United States, when the trustee takes in each State whatever would have been available to the creditors **if the bankrupt law had not been passed.**" *Id.* at 190. (emphasis added).

Thus this Court recognized the property rights in existence prior to the bankruptcy. As such, honoring state exemption laws, and none other, was in essence not impairment of contract. This is not unlike the recognition in federal bankruptcy of state law on secured transactions, lien law, or the like. Rather than impairment of contract rights, the law merely affirms them. On the other hand, when states chose whether state or federal law will apply in a national bankruptcy, the state has now entered the area of contract impairment.

Thus this Court's holding in *Moyses* it is not applicable to the present law because under the 1978 Act, in some states the trustee takes different from what is available to creditor had there been no bankruptcy law passed. For example, in Ohio state insolvency proceedings a creditor can reach all cash and other property. An Ohio domiciliary in bankruptcy can protect $400 in cash or other property OHIO REV. CODE ANN. §2329.66(A)(4) and (18) (Baldwin 1995).

III.

The states' response to the 1978 Act wherein a state may determine the amount of debt discharge (a federal prerogative) and, in the process, deny its citizens the opportunity to exercise the options afford by Section 522 risks violation of the

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2True uniformity in federal bankruptcy and a reexamination of *Moyses* will not undermine *Railway Labor Executives' Association v. Gibbons*, 455 U.S. 457 (1982), which stands for the position that bankruptcy laws for particular persons is unconstitutional.

Fourteenth Amendment. The Privileges and Immunities Clause of the Fourteenth Amendment of the U.S. Constitution states: "*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.*" U.S. CONST. Amend. XIV (emphasis added). Because Ohio's exemptions are lower, the Storers' modest house is subject to being auctioned. The Storers' case exemplifies how Ohio's departure from the federal exemptions actually deprives an individual of federal opportunity.

In as much as States cannot impair contracts, Section 522(b)(1) is not deferral of coextensive authority, but the improper delegation of Congress' exclusive national authority to impair contract. Thus Congress has invited the states to deprive its residents of privileges only Congress can create or deny. This Court was never asked to consider this critical issue in *Moyses.*

IV.

The issue in this case is ripe for this Court's determination. As of March 1993, there were nearly 872,000 personal bankruptcies filed within the previous twelve month period. THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FEDERAL JUDICIAL WORKLOAD STATISTICS, 6 (March 31, 1993). Though the number of filings is huge, there are few reported cases such as this on the issue of exemptions. The fact that there are not more appeals and decisions on the issue of exemptions does not evidence settled law. Instead it reflects the unappealing economics of bringing such an action through the appellate courts. The few courts of appeals facing the issue have felt bound by *Moyses,* some with doubts about its correctness but, nonetheless, still bound to its holdings. *See, e.g., In re Sullivan, 680 F.2d at 1134.*

Those Commentaries who have examined the issue view the *Moyses* application of geographical uniformity to be inconsistent with modern constitutional analysis. *See e.g.,*

Koffler, 58 N.Y.U.C. Rev. 22 (1983); Note: *Federal Exemptions and the opt-Out Provisions of Section 522: A Constitutional Challenge*, 58 IND. L. J. 143 (1982).

This case also provides a vehicle to further delineate the areas of exclusive authority of the national government. In addition to *Lopez, supra,* earlier this year this Court has found an area exclusively within the federal arena. *U. S. Term Limits, Inc. v. Thorton,* ____ U.S. ____, 115 S.Ct. 1842 (1995) ("States cannot impose term limits on members of Congress").

CONCLUSION

Congress' delegation of its exclusive power to impair contracts to the states via Section 522(b)(1) warrants consideration by this Court as to its constitutionality in light of the Bankruptcy Clause and the Contract Clause.

WHEREFORE, for the foregoing reasons, the Storers respectfully request that this Court issue a writ of certiorari to the U.S. Court of Appeals, Sixth Circuit.

Respectfully submitted,

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